

REMARKS

Claims 9, 10, 12 to 19, and 21 to 24 are now pending in the present application.

In view of the foregoing amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

The Office Action indicates that the declaration as filed on September 26, 2005 is missing from the file. A courtesy copy of the declaration was re-submitted, via facsimile, on April 20, 2009, to Mr. Eric Burns at (571) 273-6580. A courtesy copy is also submitted herewith. It is therefore respectfully requested that any objection as to the declaration be withdrawn.

Claims 18 and 19 are objected to because of informalities. Applicants have rewritten claims 18 and 19, without prejudice, as suggested. Withdrawal of the objections is therefore respectfully requested.

Claims 9 and 14 are rejected under 35 U.S.C. § 112, second paragraph, as not setting forth the subject matter regard as their invention.

While the rejections may not be agreed with, to facilitate matters, claims 9 and 14, as presented, now provide the takeover prompt is further output when the driver overrides the distance and speed controller by depressing an accelerator *and the vehicle comes critically close to the target object*. Support for this feature may be found, for example, at page 2, lines 7 to 14 of the Specification.

Accordingly, claims 9 and 14, as presented are allowable. Withdrawal of the rejections is therefore respectfully requested.

Claims 9, 10, 12 to 19, 21 and 22 were rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,009,368 ("Labuhn") in view of U.S. Patent No. 6,560,525 ("Joyce"), and further in view of U.S. Patent Application Publication No. 2002/0177935 ("Winner").

While the Office Action does not explicitly state that claims 23 and 24 are rejected in the Summary, it apparently asserts that these claims are also obvious.

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claim 9, as presented, is directed to a method for notifying a driver of a motor vehicle equipped with an adaptive distance and speed controller, including the feature of one of activating or deactivating a takeover prompt which informs the driver that the vehicle is coming critically close to a target object, in which the takeover prompt is further output when the driver overrides the distance and speed controller by depressing an accelerator and the vehicle comes critically close to the target object. The Office Action admits (at page six (6)) that neither Labuhn or Joyce discloses the method’s action when the driver overrides the controller by accelerating. Claim 14 includes features like those of claim 9.

As to the secondary Winner reference, it does not disclose or even suggest the feature in which a takeover prompt is further output when the driver overrides the distance and speed controller by depressing an accelerator and the vehicle comes critically close to the target object, as provided for in the context of the presently claimed subject matter. The Office Action conclusorily cites paragraphs [0030] and [0036] of Winner, but paragraph [0030] of Winner merely refers to a system that emits a collision warning as long as the special command, which activates the regulating function, has not been entered. There is no

disclosure that describes a status of the collision warnings when the regulating function has been activated by the entry of the special command. In contrast, the claimed subject matter of the independent claims features a driver overriding the distance and speed controller, which can only be done if such a controller is activated.

Further, paragraph [0036] merely refers to a system in which, when the driver is accelerating, the regulating system is not deactivated but the regulating function is suspended. The Office Action then infers that the regulating system would still emit the takeover prompt, even though the driver is depressing the accelerator. In fact, however, the reference merely indicates that because the regulating system has not been deactivated, it will not have to be reactivated by actuation signal A when the driver ceases to depress the accelerator, and that the regulating function (which controls the vehicle speed) will automatically re-engage once the driver ceases to depress the accelerator.

Even if the regulating system is not deactivated while the regulating function is suspended, this does not disclose or suggest that the warning functions remain active while the driver is depressing the accelerator, as provided for in the context of the presently claimed subject matter. If anything is to be inferred, paragraph [0036] refers to functions being suspended while systems are not deactivated. This would indicate that the warning functions are suspended -- even while ACC and LKS systems are not deactivated.

In short, Winner does not disclose, or even suggest, the features of the presently claimed subject matter of each of the independent claims in which a takeover prompt is further output when the driver overrides the distance and speed controller by depressing an accelerator and the vehicle comes critically close to the target object.

Accordingly, claims 9 and 14 are allowable, as are their respective dependent claims.

As further regards all of the obviousness rejections, any Official Notice is respectfully traversed to the extent that it is maintained and it is requested that the Examiner provide specific evidence to establish those assertions and/or contentions that may be supported by the Official Notices under 37 C.F.R. § 1.104(d)(2) or otherwise. In particular, it is respectfully requested that the Examiner provide an affidavit and/or that the Examiner provide published information concerning these assertions. This is because the § 103 rejections are apparently being based on assertions that draw on facts within the personal

knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions. (See also MPEP § 2144.03).

Accordingly, claims 9 and 14 are allowable, as are their respective dependent claims 10, 12, 13, 15 to 19, and 21 to 24. Withdrawal of the rejections is therefore respectfully requested.

In sum, it is respectfully submitted that claims 9, 10, 12 to 19, and 21 to 24 are allowable.

CONCLUSION

In view of the foregoing, it is respectfully submitted that all of the presently pending claims are allowable. It is therefore respectfully requested that the rejections and objections be withdrawn. Since all issues raised by the Examiner have been addressed, an early and favorable action on the merits is respectfully requested.

Respectfully Submitted,
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Dated: 5/26/2009

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